

BOARD OF LICENSE COMMISSIONERS

City Hall, 718 Main Street

Fitchburg MA 01420

(978) 345-9557

William A. Judge, Chairman

Robert A. Bourque

David F. Arsenault

MINUTES OF MEETING

The regular meeting of the Board of License Commissioners was held on June 19, 2008 in the Veterans Memorial Room, City Hall, Fitchburg, and called to order by Commissioner Judge at 6:00 PM.

Commissioners Robert Bourque and David Arsenault were present.

Note that this meeting was originally scheduled for June 16, 2008. Due to an anticipated lack of a quorum on June 16, 2008, at a special meeting held on June 10, 2008 it was voted to cancel the June 16, 2008 meeting and reschedule it to June 19, 2008. All parties with matters scheduled for June 16, 2008 were mailed a notice of the date change.

I. REVIEW AND ACCEPTANCE OF MINUTES FROM THE PREVIOUS MEETING.

The minutes from the meeting held on June 2, 2008 were reviewed, approved and signed.

II. NEW APPLICATIONS

The Eastwood Club, Inc., 389 Townsend St., for Special One Day All Alcoholic Beverages License for

Family Outing from 11:00 a.m. to 4:00 p.m. on September 6, 2008 at 389 Townsend St.

Approved 3/0

Phop Xayphakatsa "Wat Lao Dhammaram" Temple, for Special One Day All Alcoholic Beverages license for

Charity from 1:00 p.m. to 6:30 p.m. on June 28th and 29th, 2008 at 159 Richardson Rd.

Continued to Special Meeting to be held June 25, 2008 at 4PM 3/0

Phop Xayphakatsa "Wat Lao Dhammaram" Temple, for Special One Day All Alcoholic Beverages license for

Charity from 1:00 p.m. to 6:30 p.m. on July 26th and 27th, 2008 at 159 Richardson Rd.

Continued to Special Meeting to be held June 25, 2008 at 4PM 3/0

Phop Xayphakatsa "Wat Lao Dhammaram" Temple, for Special One Day All Alcoholic Beverages license for

Charity from 1:00 p.m. to 6:30 p.m. on August 23rd and 24th, 2008 at 159 Richardson Rd.

Continued to Special Meeting to be held June 25, 2008 at 4PM 3/0

St. Joseph's Parish for Special One Day All Alcoholic Beverages License for a Dance from 7:30 p.m. to

11:30 p.m. on June 21, 2008 at 46 Woodland St.

Approved 3/0

Fitchburg Senior Center, 14 Wallace Ave., for Special One Day All Alcoholic Beverages License for Civic Days Luncheon from 11:00 a.m. to 2:00 p.m. on June 27, 2008 in O'Neil Hall at 14 Wallace Ave.

Approved 3/0

Solicitor/Canvasser License: Jeff Pittard – Working for Pointe Pest Control, 41 Brigham St., Marlborough

Continued to July 9, 2008 per request of the applicant 3/0

III. CONTINUED APPLICATIONS

Rome Amico, Inc., 50 Whalon St., for Transfer and Change of Location of All Alcoholic Beverages Restaurant License to Center Ice Bar and Grill, LLC, 68 Airport Road, Thomas Perla, Manager.

Present were Mr. Andrew Rome and Mr. Thomas Perla.

Continued to July 9, 2008 3/0

IV. HEARINGS

Nu-Nu, Inc., d/b/a Karma at Bourbon Street, 14,16,18 Putnam St., for Transfer and Pledge of Annual Restaurant All Alcoholic Beverages License to Tati Inc., d/b/a Level Entertainment, 14,16,18 Putnam St.,

Tam Phan, Manager.

Present representing Tati, Inc. were Mr. Tam Phan and Attorney Thomas Bodkin both of whom approached and were seated at the table. Mr. Dung Nguyen was present in the front row of the audience and identified himself during the proceedings. Numerous un-named individuals filled the remainder of the seats in the room and stood in the back of the room, including Mr. Clark Straight, Mr. Matthew Straight and their attorney Steven DiPace.

Mr. Michael Gibeault, proposed Manager of Nu-Nu, Inc., was present and standing in the back of the room although he did not identify himself for the record.

Chairman Judge referenced a letter from FPD Chief Robert DeMoura. The letter was read aloud by FPD Captain Mark Louney who was representing the Chief. The text of the letter is as follows:

June 19, 2008

License Commission

City of Fitchburg

718 Main Street

Fitchburg MA 01420

To Whom It May Concern:

On behalf of the Fitchburg Police Department I do not think the License Board should allow Club Karma to transfer their license at this time as there are outstanding issues before the License Board that need to be resolved.

The five (5) outstanding issues before the Board are as follows:

1. No manager on record

2. Alleged violation of CMR 204:205-Permitting a Disturbance on Premise

3. Non-cooperation with the Fitchburg Police Department (08-2565-OF)

4. Status of establishment operations

5. Non-responsive to requests from the ABCC regarding their change of manager application.

In the best interest of the City of Fitchburg we should wait until these issues have all been resolved

before approving the license transfer.

Sincerely,

Robert A. DeMoura

CHIEF OF POLICE

Captain Louney reiterated the substance of the Chief's letter stating that the offenses should be settled prior to transfer of the license and questioned how the Board would review the offenses if Nu-Nu, Inc. was no longer the owner of the license.

Upon questioning by the Board, Mr. Phan stated that he plans to open the establishment as a restaurant after the renovations are done. He estimates the renovations to the kitchen will cost \$30,000 to \$40,000. Commissioner Arsenault stated that he would not vote to allow the establishment to operate as a nightclub. Chairman Judge stated that the Board is not holding Tati, Inc. accountable for the issues with the current owner of the license. He stated that when Tati, Inc. is ready to serve a meal from the establishment, they will receive their license (if transfer approved).

Mr. Phan stated that the renovations to the kitchen would take two to four weeks and that the restaurant could open one month after renovations are complete. With a six to eight week review process by the ABCC he stated that he expects they would be able to open upon receiving final ABCC approval. Attorney Bodkin interjected that his clients may be overly optimistic and suggested a proposed opening date of September 1, 2008.

Upon questioning by the Board Mr. Phan stated that he has no association with the current advertisements for Level Entertainment. He stated that they will be using the name "Level" for the restaurant.

Upon questioning by the Board Mr. Phan stated that Michelle Fife has financed \$195,000 for the purchase of the establishment. He stated that the agreement with Ms. Fife is to pay her \$7,000 to \$8,000 per month in payment of the loan.

Upon questioning by the Board Mr. Phan stated that his restaurant experience consists of working in a restaurant on Cape Cod for the summer of 2002. He stated that he currently owns two cell phone businesses.

Public Comment

Chairman Judge asked if anyone would like to speak in favor of the transfer application. No one asked to speak in favor.

Chairman Judge asked if anyone would like to speak in opposition to the transfer application. Mr. Clark Straight stated that many of the people in the room were from the Johnsonia Building which is directly across the street from the licensed establishment. Chairman Judge requested that, because so many people were in attendance, a spokesperson for the group or one or two people relay their sentiments to the Board. Mr. Clark Straight stated that there are forty six (46) condos right next to the bar. He states that the presence of the bar affects the development of downtown Fitchburg and handicaps his ability to sell the condos. He stated that a "bait and switch" tactic had occurred with the last transfer when it proposed a similar restaurant type establishment but it then transformed in to a nightclub. He stated that he does not object to a restaurant that closes at 11PM at that location. He stated that the transferees have several strikes against them, namely, A tainted location, no experience running a restaurant and nightclub, little financial security, no local base of friends or business associates to promote their business, a landlord who is unable to spend money on improving the property, dozens of people who are willing to fight them if they open a nightclub.

Mr. Matthew Straight stated that forty six (46) individually deeded homes are within fifty feet of the establishment. He stated that it will always be a residential area and that a nightclub presents quality of life issues. He stated that many people in the building sleep with a fan on regardless of weather to drown out the noise from the establishment. He read aloud the

following excerpt from the License Commission regulations and urged the Commission to comply with its intent:

The Board strives to issue licenses that will be an asset to the community and to ensure that all rules and regulations pertaining to licenses are complied with in order to protect the safety and health of the public. The Fitchburg License Board encourages licensees to be informed and responsible. Our goal is to help prevent problems before they happen.

Attorney Stephen DiPace spoke on direct behalf of the Straights and indirectly on behalf of the Johnsonia residents in attendance. He stated that everyone from the Johnsonia would be in support of a restaurant with a closing hour of 11PM at this location. He questioned the public need for another nightclub/bar in the area when there are currently nine or ten existing liquor establishments already. He stated that he agrees with the request of FPD Captain Mark Louney to continue the transfer until after the on-going violation hearing for the existing owners is resolved. He warned that the existing owner is financing the sale of the license and that if the new owners fail they will be returning to run the establishment. He reminded that the Entertainment Permit and the 2AM Late Closing Permit do not transfer with the license and that these two items are central to the real problems with the existing establishment. He stated that if the new owners will open a restaurant then the neighbors will be supportive and encourage them.

Ms. Ellen DiGeronimo, Fitchburg Downtown Coordinator stated that the revitalization and re-building of Fitchburg's downtown is everyone's business and needs support. She stated that the proposed transferee is investing in a building which it does not own, the existing owner of the license has unresolved issues before the Board and is very involved with the proposed transferee. She stated that everyone needs to help in overcoming the negative public perception of Fitchburg while the city seeks to achieve its goal of bringing 1000 residential units to the downtown area.

Mr. Jeremy Boyle, a Johnsonia resident, stated that the name "Level" screams nightclub. He stated that it is a dangerous precedent for the Board to approve a transfer of a license with outstanding issues because it encourages a "cut and run" response to problems. He questioned whether the transferee is interested in being open only until 11 or 12'o'clock and cautioned that they will be at a disadvantage with such a closing time.

Mr. John Flynn, a Johnsonia resident stated that he is familiar with the restaurant business in general and that it has a 50% failure rate. He stated that the transferee is referring to the establishment as a lounge and does not believe that they will be a restaurant.

An individual who did not state his name for the record but who is known to the Board as

Mr. Scott Gibeault, asked to speak. Mr. Gibeault is known to the Board as being closely associated with the management of Club Karma and an advocate of the transfer of the license. Chairman Judge did not allow this individual to have the floor stating that the time to speak in favor of the application had already been offered, no one had asked to speak in favor and that now was the time to speak in opposition to the transfer of the license.

Chairman Judge closed the public comment portion of the meeting. Several other un-named individuals raised their hands in a request to speak but the Chairman did not give them the floor.

Attorney Brodtkin asked and was granted permission to make a closing statement on behalf of his client, the applicant. He stated that the Board will always have control over the entity that is running the establishment. He stated that his clients offer a good alternative to the existing

ownership; they are very ambitious and know that the Board will keep them on a “short leash”. Chairman Judge asked the Clerk to contact the ABCC and request a definitive answer on the pledge process e.g. if the proposed transferee fails does the Pledge holder (Michelle Fife, President of Nu-Nu, Inc.) automatically take back the license or does the local board have the authority to intervene.

Chairman Judge asked Mr. Phan if he will succeed if he runs the establishment only as a restaurant and Mr. Phan stated, “Yes”.

Commissioner Bourque stated to Mr. Phan that, if it were him, he would retract the transfer application because he could not survive without a 2AM Late Closing or Entertainment Permit. Commissioner Arsenault motioned to approve the common victualler all alcohol license. The motion was seconded by Commissioner Bourque and passed by a vote of 2/1 (Judge opposed).

E.C. Peerless, Inc., d/b/a Peerless Package Store, 528 John Fitch Highway, for New Officer/Director and New Shareholders.

Continued to July 9, 2008 per request of Attorney Rob Bowen 3/0

E. Failte, Inc., d/b/a Bill Bailey’s Package Store, 25 John Fitch Highway, for New Officer/Director and New Shareholders.

Continued to July 9, 2008 per request of Attorney Rob Bowen 3/0

V. CONTINUED SUMMONS HEARING

Fourteen Mill Street Corporation d/b/a The Cellar, 14 Mill St., Frederick Blake, Manager, to discuss Outdoor Patio at 14 Mill St.

Mr. Frederick Blake present. According to Commissioners Arsenault and Bourque, Mr. Blake has complied with the previous written agreement regarding the outdoor seating layout. Mr. Blake confirmed that he agrees and has complied with the agreement.

No action taken 3/0.

VI. OTHER

- Taxi Driver Applications

Approved for one year: Sergio Vanni Roach, Jr.

Approved for two years: Raafat N. Barsoum

Approved pending submission to the clerk of license with RMV change of address sticker affixed: Rebecca J. Torres

Approved pending submission to the clerk of valid MA driver’s license: Jonathan Acosta

Not approved, applicant to be asked to attend next meeting to answer some questions regarding his application: Matthew Bettencourt

- Any other matter that may come before the Commission as time permits

The Clerk reported that a check received from Mr. Jack Hoover in the amount of \$2400 written in payment for his 2007 and 2008 liquor licenses was returned to the Treasurer’s office from the bank for insufficient funds. A letter has been sent to Mr. Hoover informing him of this and demanding payment.

The meeting adjourned at 9:15 PM.

Respectfully submitted,

Anna M. Farrell, Clerk

Approved:

William A. Judge

Robert A. Bourque

David F. Arsenault